

FILED

DEC 28 2012

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EUGENE R. WEDOFF,  
BANKRUPTCY JUDGE

In re: Canopy Financial, Inc.

)  
)  
)  
)  
Debtor.  
)

Case No. 09 B 44943

Chapter 7

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER AWARDING TO  
SEYFARTH SHAW LLP, ATTORNEYS FOR TRUSTEE GUS A. PALOIAN, FOR ALLOWANCE AND  
PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES**

TOTAL FEES REQUESTED: \$638,368.50  
TOTAL FEES REDUCED: \$5,163.00  
TOTAL FEES ALLOWED: \$633,205.50

TOTAL COSTS REQUESTED: \$23,187.49  
TOTAL COSTS REDUCED: \$299.00  
TOTAL COSTS ALLOWED: \$22,888.49

**TOTAL FEES AND COSTS ALLOWED: \$656,093.99**

The attached time and expense entries have been underlined to reflect disallowance in whole or in part. The basis for each disallowance is reflected by numerical notations that appears on the left of each underlined entry. The numerical notations correspond to the enumerated paragraphs below.

**(2) Unreasonable Time**

The Court denies the allowance in part of compensation for the following task since the professional or paraprofessional expended an unreasonable amount of time on this task in light of the nature of the task, the experience and knowledge of the professional performing the task, and the amount of time previously expended by the professional or another on the task. *In re Pettibone*, 74 B.R. 293, 306 (Bankr. N.D. Ill. 1987) ("The Court will determine what is the reasonable amount of time an attorney should have to spend on a given project... An attorney should not be rewarded for inefficiency. Similarly, attorneys will not be fully compensated for spending an unreasonable number of hours on activities of little benefit to the estate."); *In re Wildman*, 72 B.R. 700, 713 (Bankr. N.D. Ill. 1987) (same).

As to the time devoted to the preparation of the fee application itself, the Court denies the allowance of compensation that is disproportionate to the total hours in the main case. *In re Wildman*, 72 B.R. 700, 711 (Bankr. N.D. Ill. 1987) ("In the absence of unusual circumstances, the hours allowed by this Court for preparing and litigating the attorney fee application should not exceed three percent of the total hours in the main case."); *In re Spanjer Bros., Inc.*, 203 B.R. 85, 93 (Bankr. N.D. Ill. 1996) (compensation limited to 5%). See also *In re Pettibone Corp.*, 74 B.R. 293, 304 (Bankr. N.D. Ill. 1987) (citing *Coulter v. State of Tennessee*, 805 F.2d 146, 151 (6th Cir. 1986) (in non-bankruptcy cases, compensation for preparation and litigation of fee petitions limited to 3-5% of the hours of the main case)).

**(4) Insufficient Description**

The Court denies the allowance of compensation for the following task since the description of the time entry fails to identify in a reasonable manner the service rendered. *In re Pettibone*, 74 B.R. 293, 301 (Bankr. N.D. Ill. 1987) ("A proper fee application must list each activity, its date, the attorney who performed the work, a description of the nature and substance of the work performed, and the time spent on the work. [Citation omitted] Records which give no explanation of the activities performed are not compensable."); *In re Wildman*, 72 B.R. 700, 708-9 (Bankr. N.D. Ill. 1987) (same)

**(8) Trustee Work Can Not Be Compensated As Professional Services**

"The Trustee cannot effectively expand the maximum limits of Section 326(a) by hiring other people to perform his duties for him, whether they are paralegals, attorneys, accountants or other professional persons, and utilize the potentially unlimited scope of Section 330 as a basis for award of reasonable compensation." *Boldt v. United States Trustee (In re Jenkins)*, 130 F.3d 1335, 1341 (9th Cir. 1997) (quoting *In re Prairie Cent. Ry. Co.*, 87 B.R. 952, 959 (Bankr. N.D. Ill. 1988)).

**(11) Overhead Costs are Non-Compensable**

The Court denies reimbursement for fees or expenses that are overhead costs. Expenses which are overhead are not compensable because they are built into the hourly rate. See *In re Wildman*, 72 B.R. 700, 731 (Bankr. N.D. Ill. 1987). Overhead, for bankruptcy purposes, includes "all continuous administrative or general costs or expenses incident to the operation of the firm which cannot be attributed to a particular client or cost." *In re Convent Guardian Corp.*, 103 B.R. 937, 939-40 (Bankr. N.D. Ill. 1989) (quoting *In re Thacker*, 48 B.R. 161, 164 (Bankr. N.D. Ill. 1985)).

**(13) No Benefit to the Estate**

The court denies requests for fees relating to services that do not benefit the estate or that are not necessary to the administration of the case. 11 U.S.C. § 330(a)(4)(A). An attorney's internal work prior to retention to determine whether the attorney's firm satisfies the disinterestedness requirement of section 327 of the Bankruptcy Code does not provide benefit to the estate and is not compensable.



Eugene R. Wedoff

United States Bankruptcy Judge

Dated: December 28, 2012

<u>Date</u>	<u>Description</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>
08/03/12	Update correspondence file.	A. Connor	0.20	53.00
08/06/12	Prepare case status report.	J. McManus	0.50	127.50
08/14/12	Confer with G. Paloian regarding attention to various case issues.	J. Sowka	0.40	158.00
08/15/12	Prepare chart outlining remaining case issues.	J. Sowka	1.60	632.00
08/16/12	Gather and update information on open cases chart outlining remaining case issues.	J. Sowka	1.10	434.50
08/20/12	Review/review spreadsheet tracking various remaining case issues (.10); confer with G. Paloian regarding same (.10).	J. Sowka	0.20	79.00
08/21/12	Update correspondence file.	A. Connor	0.10	26.50
08/27/12	Various conferences with J. DeJonker regarding issues relate to payment of interim distribution of HSA claim holders (.20); confer with C. Robertson and J. DeJonker regarding same (.20); exchange emails with J. DeJonker regarding same (.10); legal research regarding same (.30).	J. Sowka	0.80	316.00
09/04/12	Review email from A. Cotter regarding motion to continue status conference (.10); confer with G. Paloian regarding same (.10).	J. Sowka	0.20	79.00
09/06/12	Review order continuing hearing on status conference in the SEC action and calendar same.	J. Sowka	0.10	39.50
09/07/12	Review order terminating Judge Valdez's involvement with SEC action.	J. Sowka	0.10	39.50
09/13/12	Review order entered by Judge Valdez striking status hearing in the SEC action.	J. Sowka	0.10	39.50
09/18/12	Confer with G. Paloian regarding enforcement of judgment against K. Blackburn.	J. Sowka	0.10	39.50
09/20/12	Call with R. Angart inquiring about the potential existence of a retirement plan and termination of same (.10); draft email to A. Douglass regarding same (.10); update records regarding same (.10).	J. Sowka	0.30	118.50
09/21/12	Update spreadsheet tracking remaining case administration issues (.10); draft email to G. Paloian et al. regarding same (.10); review email from R. Pinkston regarding update to same regarding the L. Lampert and Geneva Seal matters (.10); confer with J. McManus regarding update on KPMG litigation (.10); confer with G. Paloian regarding response to inquiry from the SEC and other various case issues (.20); place call and leave message for A. Dodd of the SEC regarding inquiry (.10).	J. Sowka	0.70	276.50
				- 118.50

<u>Date</u>	<u>Description</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>
09/24/12	Exchange emails with A. Dodd of the SEC regarding call to discuss distributions to creditors (.10); call with A. Dodd and A. Cotter regarding same (.10); draft email to G. Paloian regarding same (.10).	J. Sowka	0.30	118.50
09/26/12	Update list of remaining case administrative tasks to include filing of income, unemployment, payroll, and franchise tax returns and withholdings (.10); exchange emails with G. Paloian regarding same (.10); confer with J. McManus regarding same (.10). <span style="float: right;">(8)</span>	J. Sowka	0.30	118.50
10/02/12	Review email from J. McManus regarding status of preparation of tax returns.	J. Sowka	0.10	39.50
10/14/12	Draft email to E. Ralph regarding filing of corporate disclosure statement.	J. Sowka	0.10	39.50
10/16/12	Review email from A. Cotter of the SEC regarding entry of final consent judgment (.10); draft email to G. Paloian regarding same (.10).	J. Sowka	0.20	79.00
10/17/12	Confer with G. Paloian regarding request from A. Cotter of the SEC to execute final consent judgment (.10); draft email to C. Robertson regarding same (.10); draft email to A. Cotter regarding same (.10).	J. Sowka	0.30	118.50
10/18/12	Call with G. Paloian and C. Robertson regarding execution of amended consent judgment in SEC action (.10); review/analyze revisions to same (.20); confer with G. Paloian regarding same (.10); cause same to be executed (.10); review email from A. Cotter regarding authorization to drop monetary claims (.10); draft email to G. Paloian and C. Robertson regarding same (.10).	J. Sowka	0.70	276.50
10/22/12	Review email from A. Cotter of the SEC regarding filing of uncontested motion to remove monetary claims against Canopy (.10); review email from C. Robertson regarding same (.10); confer with G. Paloian regarding same (.10); draft email to A. Cotter transmitting copy of executed consent to resolve pending SEC inquiry (.10); confer with C. Tholen regarding delivery of original executed settlement agreement to A. Cotter and execute cover letter regarding same (.10); review email from A. Cotter regarding execution of consent and filing of motion to approve same (.10).	J. Sowka	0.60	237.00
<b>TOTAL</b>			<b>9.10</b>	<b>\$3,485.50</b>

Total deductions \$ 1747.50

<u>Date</u>	<u>Description</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>
08/09/12	Legal research regarding statutory authority for interim distributions of assets (.20); confer with G. Paloian regarding same (.10); draft email to G. Paloian regarding same (.20).	J. Sowka	2.90	1,145.50
08/15/12	Update claims analysis spreadsheet.	J. McManus	0.40	102.00
08/20/12	Review responses to agreed order letters (.20); review Shawnee claim and individual claims filed by Shawnee HSA entities (.50); compile recent late filed claims (.20); revise claims analysis spreadsheet (.70).	J. McManus	1.60	408.00
08/22/12	Discuss claims review status with J. McManus.	C. Harney	0.20	63.00
08/23/12	Revise unsecured creditors' claims analysis spreadsheet.	J. McManus	0.70	178.50
08/24/12	Call with G. Paloian regarding issues related to interim distribution to HSA account holders.	J. Sowka	0.20	79.00
08/27/12	Confer with J. McManus regarding review of claims registry for potential indemnification claim regarding same.	J. Sowka	0.10	39.50
08/27/12	Continue review of HSA claims regarding letters to claimants to resolve claims.	J. McManus	1.20	306.00
08/28/12	Legal research regarding estimation of contingent unliquidated indemnification claims under section 502(c) and issues related to same (4.60); various conferences with G. Paloian and J. DeJonker regarding same (.30); review/analyze proof of claim filed by G. Solomon regarding same (.20); confer with J. McManus regarding same (.10); review/analyze answer filed by Drucker regarding same (.20).	J. Sowka	5.40	2,133.00
08/28/12	Conference with J. McManus regarding status of claims review (.10); strategy discussion with J. McManus regarding claims review analysis (.20).	C. Harney	0.30	94.50
08/28/12	Revise/update claims analysis spreadsheet in preparation for HSA distribution.	J. McManus	1.20	306.00
08/29/12	Confer with C. Delgado regarding preparation of memorandum analyzing claim estimation issues (.30); draft email to C. Delgado regarding same (.20); confer with G. Silver of the U.S. Trustee's Office regarding same (.30); confer with G. Paloian regarding same (.10); confer with R. Pinkston regarding indemnification issues related to the C. Drucker and G. Solomon litigation and claims (.30); review email from R. Pinkston regarding same (.10); review email from S. Knight regarding discovery issues in the N. Gilich bankruptcy (.10).	J. Sowka	1.40	553.00

<u>Date</u>	<u>Description</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>
08/29/12	Conference call with J. Sowka in connection with research related to estimation of claims (.20) and review relevant case law and secondary resources in connection with estimation of claims research (1.30).	C. Delgado	1.50	450.00
08/29/12	Confer with J. Sowka regarding indemnification claims issues (.20); review claims regarding same (.40); investigate status of Twin City Insurance claim (.30).	J. McManus	0.90	229.50
08/29/12	Revise claim analysis spreadsheet regarding unsecured claims.	J. McManus	0.70	178.50
08/30/12	Confer with D. Dawson regarding handling secured claims.	J. McManus	0.20	51.00
08/30/12	Confer with V. Lazar regarding status of D&O insurance claim and potential for recovery regarding same (.20); review claims register regarding indemnification claims (.20); confer with J. Sowka regarding claims search results (.10).	J. McManus	0.50	127.50
08/31/12	Initial research regarding whether the trustee can provide an interim distribution pursuant to 502(c).	C. Delgado	1.20	360.00
09/04/12	Review and analysis of case law related to memorandum regarding Overview of Section 502(c) claim estimation process in connection with determining whether Trustee can make a final interim distribution for contingent, unliquidated claim.	C. Delgado	4.50	1,350.00
09/05/12	Draft legal memorandum regarding Overview of Section 502(c) claim estimation process in connection with determining Trustee can make a final interim distribution for contingent, unliquidated claim (3.90); research case law related to memorandum regarding Overview of Section 502(c) claim estimation process in connection with determining whether the Trustee can make a final interim distribution for a contingent claim (.20).	C. Delgado	4.10	1,230.00
09/05/12	Revise claims analysis spreadsheet.	J. McManus	0.60	153.00
09/06/12	Meeting with J. McManus and A. Connor regarding review of claims in Canopy Estate.	G. Paloian	0.70	420.00
09/06/12	Conference with J. McManus discussing claims review status in preparation of meeting (.30); review prior files and notes in preparation of claims review meeting (.40); claim review meeting with G. Paloian et al (.80);	C. Harney	1.50	472.50

Att's job trustee  
work rather than  
attorney services

<u>Date</u>	<u>Description</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>
08/09/12	Telephone conference J. Clodfelder, HSA claimant, regarding distribution status (.10); convey concerns to G. Paloian (.10); edit website update (.30).	J. McManus	0.50	127.50
08/14/12	Check Estate website statistics (.20); draft email to J. McManus regarding the same (.10).	R. Lutkus	0.30	112.50
08/17/12	Prepare website update (.80); confer with G. Paloian regarding same (.10).	J. McManus	0.90	229.50
08/20/12	Revise Canopy website update (.40); communications with J. Simmons regarding same and regarding timing of distribution (.10).	J. McManus	0.50	127.50
08/21/12	Revise Canopy estate website.	G. Paloian	0.40	240.00
08/21/12	Confer with G. Paloian regarding strategy for updating distribution status on Canopy website (.20); revise website status update (1.20).	J. McManus	1.40	357.00
08/22/12	Call with HSA claim holder regarding status of case.	J. Sowka	0.10	39.50
08/22/12	Revise website update to include all recoveries since last update on 2/8/12 (.80); telephone conference with K. Smith regarding HSA claim status (.20); confer with R. Lutkus regarding loading update (.10).	J. McManus	1.10	280.50
08/23/12	Review redline version of Canopy case status updates in preparation for updating of Canopy Estate Website (.20); edit website code to reflect new changes/updates to information on public facing website (2.00)	R. Lutkus	2.20	825.00
08/23/12	Revise website update (.50); confer with R. Lutkus regarding same (.10).	J. McManus	0.60	153.00
08/27/12	Call with HSA creditor regarding status of case and distribution.	J. Sowka	0.10	39.50
08/27/12	Telephone conference with C. D'Angelo regarding website update and HSA claim distribution (.10); email G. Paloian regarding B. Weiss voicemail (HSA claimant) and request for response to same (.10).	J. McManus	0.20	51.00
09/05/12	Telephone conference with D. Warren, HSA claimant, regarding distribution status.	J. McManus	0.10	25.50
09/14/12	Respond to HSA claimant calls from L. Carter and L. Golub.	J. McManus	0.20	51.00
09/20/12	Telephone conference with HSA claimant regarding status of claims review distribution to claimants.	J. McManus	0.20	51.00
10/17/12	Telephone conference with D. Warren regarding HSA distribution status.	J. McManus	0.10	25.50
<b>TOTAL</b>			<b>Total Deduction 8.90</b>	<b>\$2,735.50</b>

<u>Date</u>	<u>Description</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>
10/26/12	Prepare certificates of service for filing for Burgstone citation (.10), Hettrich - two (.20), Artisan - two (.20) and Suchocki (.10); file six certificates of service (.20); follow up with Docket regarding terminating service efforts on 110 Management members (.20).	A. Connor	1.00	265.00
10/26/12	Exchange emails with M. Leipold, et al., regarding I. Cheminov examination (.10); review/analyze voicemail message from J. Toddhunter regarding 110 Management post-judgment collection (.10).	J. DeJonker	0.20	96.00
10/29/12	Correspond with C. Harney regarding coverage of 341 meeting in Sky Minnesota collections effort (.20); confer with C. Harney regarding same (.30).	D. Bochneak	0.50	170.00
10/29/12	Review/analyze contents of record on appeal for completeness.	E. Ralph	1.10	335.50
10/29/12	Draft email to E. Ralph regarding Buddha's failure to file designation of record and statement of issues on appeal (.10); confer with E. Ralph regarding same (.10).	J. Sowka	0.20	79.00
10/30/12	Telephone conference with C. Harney regarding hearing on citations to discover assets with respect to 1113 W. Randolph Management, LLC (.20); review/revise chart regarding hearing on citations to discover assets with respect to 1113 W. Randolph Management, LLC (.20).	M. Pinkston	0.40	140.00
10/31/12	Review/revise chart for hearing on citations to discover assets (.20); prepare e-mail correspondence to C. Harney and G. Paloian regarding citation to discover assets issued to 1113 W. Randolph Management LLC (.20); conference with G. Paloian regarding citation to discover assets issued to 1113 W. Randolph Management (.20); prepare e-mail correspondence to counsel for 1113 W. Randolph Management regarding potential turnover of van (.10).	M. Pinkston	0.70	245.00
10/31/12	Telephone conferences with District Court and Seventh Circuit clerk's offices regarding errors in submission of record on appeal.	E. Ralph	0.80	244.00
<b>TOTAL</b>			<b>92.40</b>	<b>\$28,893.00</b>

No deductions

Date	Description	Timekeeper	Hours	Value
08/14/12	<u>Prepare for hearing on motion to exceed page limitation with respect to brief in opposition to motion to dismiss filed by Solomon and GGV entities (.30); represent trustee at hearing on motion to exceed page limitation with respect to brief in opposition to motion to dismiss filed by Solomon and GGV entities (1.00); conference with G. Paloian regarding hearing on motion to exceed page limitation (.10); conference with G. Paloian</u>	M. Pinkston	8.20	2,870.00 <u>(2) - <del>140</del> -\$140</u>

<u>Date</u>	<u>Description</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>
09/05/12	Retrieve expense backup for J. DeJonker's stay in San Francisco for depositions (.10); confer with G. Paloian and J. DeJonker regarding same and regarding continued hearing regarding same (.20).	J. McManus	0.30	76.50
09/06/12	Conference with J. McManus regarding Seyfarth request for travel reimbursement.	G. Paloian	0.20	120.00
09/07/12	Investigate fee application expense item.	G. Paloian	0.20	120.00
09/07/12	Assemble additional back-up for J. DeJonker regarding appearance at fee application hearing regarding travel expenses.	J. McManus	0.20	51.00
09/12/12	Review/edit August time detail in preparation of Fee Application.	J. McManus	0.80	204.00
09/14/12	Review/edit August time detail in preparation for fee application.	J. McManus	0.70	178.50
09/18/12	Review fee application in order to determine inclusion/omission of transcription vendor invoice.	A. Connor	0.20	53.00
09/20/12	Prepare Ninth Interim Fee Application.	J. McManus	0.80	204.00
09/24/12	Review/edit August time detail in preparation of next fee application.	J. McManus	0.70	178.50
09/25/12	Prepare Ninth Monthly Fee Application for Seyfarth.	J. McManus	0.80	204.00
09/28/12	Prepare Seyfarth's Ninth Fee Application.	J. McManus	1.40	357.00
10/02/12	Prepare Seyfarth's Ninth Fee Application.	J. McManus	0.90	229.50
10/05/12	Prepare Seyfarth's Ninth Fee Application.	J. McManus	1.20	306.00
10/08/12	Prepare Seyfarth Ninth Fee Application.	J. McManus	0.70	178.50
10/09/12	Prepare Seyfarth Fee Application.	J. McManus	0.80	204.00
10/11/12	Review September detail in connection with Seyfarth's Ninth Interim Fee Application.	J. McManus	0.90	229.50
10/18/12	Review/edit September detail in preparation of Seyfarth's Ninth Fee Application.	J. McManus	0.80	204.00
10/24/12	Prepare pleading portion of fee application (1.20); edit Exhibit 3 - expense portion of fee application (.80); additional edits to August detail (.90).	J. McManus	2.90	739.50
10/25/12	Revise pleading portion of Seyfarth's ninth fee application (.60); revise expenses portion of fee application (.60).	J. McManus	1.20	306.00
10/26/12	Revise Seyfarth's Ninth Interim Fee Application.	J. McManus	0.80	204.00
10/29/12	Edit September detail in preparation of Seyfarth's Ninth Monthly Fee Application.	J. McManus	1.00	255.00
<b>TOTAL</b>			<b>94.00</b>	<b>\$26,106.50</b>

Total Deduction \$120

<u>SUMMARY OF FEES</u>		
<u>Description</u>	<u>Hours</u>	<u>Value</u>
Case Administration	9.10	\$3,485.50
Claims Administration and Analysis	103.20	\$33,130.00
Enforcement and Collection of Judgments	92.40	\$28,893.00
Creditor Inquiries & Communications	8.90	\$2,735.50
Investigation of Estate Claims/Adversary Proceedings/Litigation	1,390.40	\$535,817.00
Other Professional Fee Applications	32.60	\$7,730.00
Fee Applications	94.00	\$26,106.50
	<b>1,730.60</b>	<b>\$637,897.50</b>

08/20/12	LegaLink, Inc., Invoice # 14145432, Invoice Date 08/01/2012 - Deposition transcript of A. Wallace	1,802.35
08/20/12	LegaLink, Inc., Invoice # 14145443, Invoice Date 08/01/2012 - Deposition transcript of J. Rubenstein	1,928.95
08/24/12	LegaLink Inc., Invoice # 14145801, Invoice Date 08/09/2012 - Deposition transcript of S. Engel	3,577.20
08/28/12	LegaLink, Inc., Invoice # 14144754, Invoice Date 07/18/2012 - Deposition transcript of V. Kashyap	1,245.10

**\$10,344.10**

**Electronic Data Processing-Native Files**

08/07/12	Electronic Data Processing-Native Files - Fifth Third Litigation Support	4.50
08/17/12	Electronic Data Processing-Native Files - Fifth Third Litigation Support	13.32
09/07/12	Electronic Data Processing-Native Files - Fifth Third Litigation Support	48.06
09/17/12	Other - RICHARD LUTKUS Software license renewal for data backup 09/11/12	299.00

**\$364.88**

(1)

**Optical Character Recognition**

08/17/12	Optical Character Recognition	2.07
09/07/12	Optical Character Recognition	38.91

**\$40.98**

**Total Disbursements**

**23,187.49**

**Total Fees And Disbursements This Statement**

**\$661,084.99**

Total deduction \$ 299